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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 208

GENERAL DRIVERS ALLIED AUTOMOTIVE AND PETROLEUM LOCAL UNION NO. 498, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, C. B. BUTLER, INDIVIDUALLY, AND AS PRESIDENT OF SAID LOCAL NO. 498, AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

vs.

FLOYD M. HIGGINS, OSCAR WADDELL AND BEULAH LAMUEL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS.

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

James H. Barnes,
434 Brotherhood Building,
Kansas City, Kansas

John Manning,
Robert S. Fousek,
3333 Warwick Blvd.,
Kansas City, Missouri

Herbert S. Thatcher,
1009 Tower Building,
Washington 5, D. C.

David Previant,
511 Warner Building,
Milwaukee 3, Wisconsin

Counsel for Petitioners

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Petitioners,

v.

FLOYD M. HIGGINS, OSCAR WADDELL AND BEULAH LAMUEL,

Respondents.

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

I.

The respondents have suggested, but have not urged, that this case may be moot because the employer party to the collective agreement containing the agency shop clause herein has gone out of business. This fortuity no more terminates the litigable rights of the parties to this case than would the termination of the collective agreement itself—another happenstance which often occurs in litigation involving particular clauses whose enforcement or operation have raised issues of sufficient moment to bring before

this Court. See e.g. *Textile Workers v. Lincoln Mills,* 353 US 448 at 449. Furthermore, there is a continuing possibility in the instant case of cross or counter claims for damages, as for payment of undeducted service fees during, at the very least, the period of the temporary restraint against such deductions entered herein when the employer was in business, and as for recovery of litigation expenses, including attorneys' fees, in the event of reversal here. See *Springfield v. Crawfordsville State Bank,* 231 US 541, 542.

II.

Respondents more seriously raise the objection that there is no final judgment here, the rights of the parties not being fully determined by the mere reversal by the Kansas Supreme Court of the trial court's ruling that the complaint did not state a cause of action. It is significant, however, that the court below did not remand the case for trial or other further proceedings, this for the reason, as understood and regarded by the parties, that the suit was one for declaratory judgment, not injunction alone. The issue of the validity of the agency shop clause having been thoroughly briefed and argued, and the Kansas Supreme Court having discussed and disposed of this issue in favor of the contentions of the respondents, surely no purpose whatsoever would or could be served by further litigation below. It is not argued nor is it the fact that the parties contemplate further litigation on the merits; the full declaration of the rights by the highest tribunal in the state has served the basic purpose of the original action. If substance not form is to control, the issues presented in this petition are ripe for adjudication here, for surely the decision of the court below for all practical and legal purposes has determined the rights of the parties so that nothing remains to be done by the trial court except the ministerial act of en-

tering a judgment for petitioners. Thus the requirements of *Gospel Army v. Los Angeles*, 331 US 543, have been fulfilled. The factor which distinguishes the present case from *Missouri and Kansas Interurban Ry. v. City of Olathe*, 222 US 185 (1911) and other cases cited by respondents is that here, unlike in those cases, the principle relief sought was a declaration of rights (regarding the validity and enforceability of the agency shop clause), and that relief has been fully accorded by the highest state tribunal, leaving nothing to be done below by way of litigation or adjudication except the ministerial act of entering a declaratory judgment in plaintiffs' favor.

III.

On the merits, respondents place almost entire reliance on this Court's decision in *Algoma Plywood v. The Wisconsin Employment Relations Board*, 336 US 301, and the assumption that that case equates a union security agreement involving some aspect of union membership as a condition of employment. The language of the decision permits no such assumption. To begin with the case itself involved a maintenance of membership clause and not an agency shop clause, and at the time the decision was written (1949) the agency shop clause was a relatively obscure subject matter of collective bargaining. It cannot be assumed that the agency shop clause, because it may operate to encourage union membership, is in fact a type of agreement outlawed by Section 8(a)(3) of the Act, any more than it can be assumed that an exclusive union referral or hiring hall agreement, because it may encourage union membership, constitutes a type of agreement proscribed by that section. See e.g. Local 357, *International Brotherhood of Teamsters v. N.L.R.B.*, 365 US 667. Nor is there any charge or showing here that the amount of the service fee did not repre-

sent a fair proportion of the costs of collective bargaining to be borne by all who receive the benefits thereof. The considerations which might impel the banning of agreements which compel union membership, including the factor of alleged forced membership in and allegiance to an organization to which an employee might have social, political or religious objections, are not applicable to the question of whether employees should obtain statutory protection from any attempt by a collective bargaining representative to obtain from them the aliquot costs of obtaining and administering a collective agreement.

Since the legislative history of the Act discloses no intent on the part of Congress to impose or permit restrictions in the field of agency shop agreements, and since the considerations applicable to their use are different from the considerations applicable to the use of agreements which in one way or another require actual union membership as a condition of employment, respondents are not justified in attempting to extend either the language or rationale of *Algoma Plywood* to embrace a type of agreement in no way involved in that case. Indeed, since the Court (336 US at 315) spoke synonymously only of union security agreements requiring membership as a condition of employment, it is only that type of agreement, and not the agency shop agreement, which can be considered as embraced under the term "union security agreement" as that term is used in the decision.

Respectfully submitted,

Herbert S. Thatcher,
1009 Tower Building,
Washington 5, D. C.

David Previant,
511 Warner Building,
Milwaukee 3, Wisconsin

James H. Barnes,
434 Brotherhood Building,
Kansas City, Kansas

John Manning,
Robert S. Fousek,
3333 Warwick Blvd.
Kansas City, Missouri